

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO. 1:24cv23352**

JESUS GONZALEZ,

Plaintiff,

v.

OSIB 50TH STREET OPERATOR, LLC,
d/b/a CITIZENM NEW YORK TIMES
SQUARE HOTEL, A foreign limited liability
company,

Defendant.

**NOTICE OF REMOVAL OF ACTION PURSUANT TO 28 U.S.C. §§ 1331, 1441 AND
1446 BY DEFENDANT OSIB 50TH STREET OPERATOR, LLC**

Pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, Defendant OSIB 50th Street Operator, LLC, d/b/a CitizenM New York Times Square Hotel (“Defendant” or “CitizenM”), by the undersigned, hereby provides notice of removal of this action entitled *Jesus Gonzalez v. OSIB 50th Street Operator, LLC, d/b/a CitizenM New York Times Square Hotel*, currently pending in the County Court of the Eleventh Judicial Circuit in Miami-Dade County, Florida, Case Number 2024-136142-CC-25, to the United States District Court for the Southern District of Florida, Miami Division. In support of this removal, Defendant further states:

1. This is a civil action filed on or about July 16, 2024, by Plaintiff Jesus Gonzalez (“Plaintiff”) in the County Court of the Eleventh Judicial Circuit in Miami-Dade County, Florida, Case Number 2024-136142-CC-25, captioned *Jesus Gonzalez v. OSIB 50th Street Operator, LLC, d/b/a CitizenM New York Times Square Hotel* (“State Court Action”).

2. Defendant was served with a copy of the Complaint on July 31, 2024.

3. Plaintiff generally alleges that Defendant violated Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181 *et seq.* (“ADA”), the New York State Human Rights Law, NYS Exec. Law § 296(2)(a), and the New York City Human Rights Law, NYC Admin Code § 8-107(4)(a).

4. The State Court Action may be removed to this Court because the Court has jurisdiction under 28 U.S.C. §§ 1331 and 1441.

I. THE PROCEDURAL REQUIREMENTS FOR REMOVAL HAVE BEEN SATISFIED.

5. Pleadings and process. Pursuant to 28 U.S.C. § 1446(a), Defendant attaches to this Notice of Removal a copy of all process, pleadings, and orders entered in the State Court Action. (See **Exhibit A**, attached hereto). No proceedings have occurred in the County Court of the Eleventh Judicial Circuit in Miami-Dade County, Florida (the “State Court”) as of the date of this Notice of Removal. Defendant has not answered or moved in response to the Complaint filed by Plaintiff. Defendant hereby reserves all rights to assert any and all defenses and/or objections to the Complaint.

6. Removal is timely. A notice of removal may be filed within 30 days after the defendant is served with a copy of the initial pleading, motion, or other paper from which it may be ascertained that the case is removable. 28 U.S.C. § 1446(b); *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 354 (1999) (recognizing that the time for filing a notice of removal does not begin to run until a party has been formally served with the summons and complaint under applicable state law). Plaintiff commenced this action in the State Court on or about July 16, 2024. Defendant was served with a copy of the Complaint on July 31, 2024. Therefore, this removal is timely filed pursuant to 28 U.S.C. § 1446(b) and (c).

7. Removal to proper court. Removal of the State Court Action to this Court is proper under 28 U.S.C. § 1441(a) because the Southern District of Florida, Miami Division is the “district

and division embracing the place where such action is pending.” *See* 28 U.S.C. § 1441(a) and 28 U.S.C. § 89.

8. Notice to state court and adverse parties. Promptly following the filing of this Notice of Removal, written notice of the removal of this action will be served to Plaintiff’s counsel, as required by 28 U.S.C. § 1446(d). A true and correct copy of this Notice of Removal will also be promptly filed with the State Court, pursuant to 28 U.S.C. § 1446(d).

9. CitizenM is the only defendant in this action. No other defendants have been properly joined or served in this action. *See* 28 U.S.C. § 1446(b)(2). All procedural prerequisites for removal under § 1446 have therefore been met.

II. REMOVAL IS PROPER BECAUSE THIS COURT HAS ORIGINAL JURISDICTION UNDER 28 U.S.C. § 1331.

10. Defendant is permitted to remove to this Court “any civil action brought in a State court of which the district courts of the United States have original jurisdiction.” 28 U.S.C. § 1441(a).

11. Under 28 U.S.C. § 1331, “[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” Plaintiff’s Complaint purports to state civil claims arising under the laws of the United States, namely, the ADA, 42 U.S.C. §§ 12181 *et seq.* Thus, this Court has Federal Question jurisdiction. *See, e.g.,* 28 U.S.C. § 1331; *Weaver v. Florida Power & Light Co.*, 172 F.3d 771, 772 n.1 (11th Cir. 1999). This case can be removed under § 1441(a).

WHEREFORE, Defendant hereby respectfully removes this action entitled *Jesus Gonzalez v. OSIB 50th Street Operator, LLC, d/b/a CitizenM New York Times Square Hotel*, currently pending in the County Court of the Eleventh Judicial Circuit in Miami-Dade County,

Florida, Case Number 2024-136142-CC-25, to the United State District Court for the Southern District of Florida, Miami Division.

Respectfully submitted,

Dated: August 30, 2024

By: /s/ Irene Motles

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*Attorneys for Defendant OSIB 50th Street
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CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2024, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

Nolan K. Klein, Esq.
klein@nklegal.com

Dated: August 30, 2024

/s/ Irene Motles

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